

2009 DRAFTING REQUEST

Bill

Received: **11/18/2008**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Miner**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - water quality**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Miner, BB0233 -

Topic:

Contaminated sediment bonding and program

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			State
/P1	btradewe 11/19/2008	wjackson 12/01/2008	jfrantze 12/02/2008	_____	sbasford 12/02/2008		State
/1	btradewe 01/07/2009	wjackson 01/08/2009	rschluet 01/08/2009	_____	lparisi 01/08/2009		

FE Sent For:

<END>

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/?				_____			State
/P1	btradewe 11/19/2008	wjackson 12/01/2008	jfrantze 12/02/2008	_____	sbasford 12/02/2008		

FE Sent For:

11/18/08

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[Handwritten initials]
<END>

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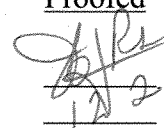
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/?	btradewe	/pl WLj 11/28		 12/2			

FE Sent For:

<END>

2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Contaminated Sediment Bonding Increase and Program Modification
- Tracking Code: BB0233
- SBO team: Agriculture, Environment and Justice
- SBO analyst: Andrew Miner AM 11/18/08
 - Phone: 266-1103
 - Email: andrew.miner@wisconsin.gov
- Agency acronym: DNR
- Agency number: 370
- Priority (Low, Medium, High): High

Intent:

1. Provide for a bonding authorization increase of \$5 million for the contaminated sediment bonding program under 20.866 (2)(ti).
2. Strike language under s. 281.87 that requires eligible projects to receive federal funds under 33 USC 1268 (c) (12). Projects would still have to be on the Great Lakes or their tributaries.

year in implementing the system of surveillance of the water quality in the Great Lakes System, including the monitoring of groundwater and sediment, with particular reference to toxic pollutants;

(C) describes the long-term prospects for improving the condition of the Great Lakes; and

(D) provides a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978, as amended by the Water Quality Agreement of 1987 and any other agreements and amendments, \1\ which assessment shall--

(i) show by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amount anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates; and

(ii) include a report of current programs administered by other Federal agencies which make available resources to the Great Lakes water quality management efforts.

(11) Confined disposal facilities

(A) The Administrator, in consultation with the Assistant Secretary of the Army for Civil Works, shall develop and implement, within one year of November 16, 1990, management plans for every Great Lakes confined disposal facility.

(B) The plan shall provide for monitoring of such facilities, including--

(i) water quality at the site and in the area of the site;

(ii) sediment quality at the site and in the area of the site;

(iii) the diversity, productivity, and stability of aquatic organisms at the site and in the area of the site; and

(iv) such other conditions as the Administrator deems appropriate.

(C) The plan shall identify the anticipated use and management of the site over the following twenty-year period including the expected termination of dumping at the site, the anticipated need for site management, including pollution control, following the termination of the use of the site.

(D) The plan shall identify a schedule for review and revision of the plan which shall not be less frequent than five years after adoption of the plan and every five years thereafter.

* (12) Remediation of sediment contamination in areas of concern

(A) In general

In accordance with this paragraph, the Administrator, acting through the Program Office, may carry out projects that meet the requirements of subparagraph (B).

(B) Eligible projects

A project meets the requirements of this subparagraph if the project is to be carried out in an area of concern located wholly or partially in the United States and the project--

(i) monitors or evaluates contaminated sediment;

(ii) subject to subparagraph (D), implements a plan to remediate contaminated sediment; or

(iii) prevents further or renewed contamination of sediment.

(C) Priority

In selecting projects to carry out under this paragraph, the Administrator shall give priority to a project that--

(i) constitutes remedial action for contaminated sediment;

(ii) (I) has been identified in a Remedial Action Plan submitted under paragraph (3); and

(II) is ready to be implemented;

(iii) will use an innovative approach, technology, or technique that may provide greater environmental benefits, or equivalent environmental benefits at a reduced cost; or

(iv) includes remediation to be commenced not later than 1 year after the date of receipt of funds for the project.

(D) Limitation

The Administrator may not carry out a project under this paragraph for remediation of contaminated sediments located in an area of concern--

(i) if an evaluation of remedial alternatives for the area of concern has not been conducted, including a review of the short-term and long-term effects of the alternatives on human health and the environment; or

(ii) if the Administrator determines that the area of concern is likely to suffer significant further or renewed contamination from existing sources of pollutants causing sediment contamination following completion of the project.

(E) Non-Federal share

(i) In general

The non-Federal share of the cost of a project carried out under this paragraph shall be at least 35 percent.

(ii) In-kind contributions

The non-Federal share of the cost of a project carried out under this paragraph may include the value of in-kind services contributed by a non-Federal sponsor.

(iii) Non-Federal share

The non-Federal share of the cost of a project carried out under this paragraph--

(I) may include monies paid pursuant to, or the value of any in-kind service performed under, an administrative order on consent or judicial consent decree; but

(II) may not include any funds paid pursuant to, or the value of any in-kind service performed under, a unilateral administrative order or court order.

(iv) Operation and maintenance

The non-Federal share of the cost of the operation and maintenance of a project carried out under this paragraph

shall be 100 percent.

(F) Maintenance of effort

The Administrator may not carry out a project under this paragraph unless the non-Federal sponsor enters into such agreements with the Administrator as the Administrator may require to ensure that the non-Federal sponsor will maintain its aggregate expenditures from all other sources for remediation programs in the area of concern in which the project is located at or above the average level of such expenditures in the 2 fiscal years preceding the date on which the project is initiated.

(G) Coordination

In carrying out projects under this paragraph, the Administrator shall coordinate with the Secretary of the Army, and with the Governors of States in which the projects are located, to ensure that Federal and State assistance for remediation in areas of concern is used as efficiently as practicable.

(H) Authorization of appropriations

(i) In general

In addition to other amounts authorized under this section, there is authorized to be appropriated to carry out this paragraph \$50,000,000 for each of fiscal years 2004 through 2008.

(ii) Availability

Funds made available under clause (i) shall remain available until expended.

(13) Public information program

(A) In general

The Administrator, acting through the Program Office and in coordination with States, Indian tribes, local governments, and other entities, may carry out a public information program to provide information relating to the remediation of contaminated sediment to the public in areas of concern that are located wholly or partially in the United States.

(B) Authorization of appropriations

There is authorized to be appropriated to carry out this paragraph \$1,000,000 for each of fiscal years 2004 through 2008.

(d) Great Lakes research

(1) Establishment of Research Office

There is established within the National Oceanic and Atmospheric Administration the Great Lakes Research Office.

(2) Identification of issues



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0858/P1

RCT:.....

IN 11/19

Wlj

DOA:.....Miner, BB0233 - Contaminated sediment bonding and program

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Note

Do Not Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

✓ ENVIRONMENT

↓ WATER QUALITY

Current federal law authorizes the Environmental Protection Agency (EPA) to carry out projects to clean up contaminated sediment in the Great Lakes and tributaries of the Great Lakes. The federal law requires a portion of the funding for a project to be provided from a source other than the federal government. Current state law authorizes DNR to pay a portion of the costs of a project to remove contaminated sediment from Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior if federal funds are provided for the project by EPA. The law authorizes the issuance of \$17,000,000 in bonds, to be repaid from the environmental fund, for this purpose.

This bill authorizes DNR to pay a portion of the costs of a project to remove contaminated sediment from Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior without regard to whether federal funds are provided for the project by EPA. The bill also increase the bonding authority for sediment removal projects by \$5,000,000.

EPA provides

provides federal funds for
the project

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.866 (2) (ti) of the statutes is amended to read:

20.866 (2) (ti) *Natural resources; contaminated sediment removal.* From the capital improvement fund, a sum sufficient for the department of natural resources to fund removal of contaminated sediment under s. 281.87. The state may contract public debt in an amount not to exceed ~~\$17,000,000~~ \$22,000,000 for this purpose.

History: 1971 c. 42; 1971 c. 100 s. 23; 1971 c. 125, 211, 215, 236, 307, 330, 336; 1973 c. 90 ss. 148 to 149m, 555m (2); 1973 c. 333; 1975 c. 26, 39, 40, 41, 200, 224, 422; 1977 c. 4, 6; 1977 c. 29 ss. 385 to 387, 1650m (4), 1656 (43); 1977 c. 418; 1979 c. 4; 1979 c. 34 ss. 675a to 677v, 2102 (6) (a), (39) (a), (52) (a); 1979 c. 107, 221; 1981 c. 1 ss. 17, 18, 47; 1981 c. 20, 108, 317, 336; 1983 a. 27; 1983 a. 36 s. 96 (4); 1983 a. 97, 192, 195, 212; 1983 a. 410 s. 2202 (2); 1985 a. 6; 1985 a. 8 ss. 4, 12; 1985 a. 29 ss. 589m to 598, 3202 (23) (c), (26) (a), (53) (a); 1985 a. 77, 120, 332; 1987 a. 27, 295, 298, 399, 403, 409; 1989 a. 31, 46, 107, 122, 219, 336, 359, 366; 1991 a. 39, 51, 269, 309, 324; 1993 a. 2, 16, 98, 115, 213, 343, 377, 413, 437, 453, 485; 1995 a. 27 ss. 1159 to 1168s, 9126 (19), 9145 (1); 1995 a. 40, 57, 60, 113; 1995 a. 216, s. 30m and 9127; 1995 a. 227, 246, 372, 388, 416, 452; 1997 a. 27, 35, 61, 164, 237, 252; 1999 a. 4, 9, 146; 1999 a. 150 s. 672; 1999 a. 184; 2001 a. 12, 16, 103, 109; 2003 a. 33, 64, 91, 129; 2005 a. 1, 22, 25, 102, 300; 2007 a. 5; 2007 a. 20 ss. 582 to 597s, 9121 (6) (a); 2007 a. 226.

SECTION 2. 281.87 of the statutes is amended to read:

281.87 Great Lakes contaminated sediment removal. The department may expend funds from the appropriation under s. 20.866 (2) (ti) to pay a portion of the costs of a project to remove contaminated sediment from Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior if ~~federal funds are provided for the project under 33 USC 1268 (e) (12).~~

History: 2007 a. 20.

(END)

ONote

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0858/P1dn

RCT:.....

wij

Date

Andrew Miner:

As requested, this draft increases bonding authority for projects to remove contaminated sediments from the Great Lakes and their tributaries and eliminates the limitation on the use of the proceeds to projects for which EPA provides funding. The federal law includes a number of requirements for projects to receive EPA funding, effectively imposing those requirements on the use of the state bond proceeds. (I can provide you with a copy of the federal law if you are interested.) Without the link to the federal law, there are almost no requirements for the projects. I am unaware of another program that authorizes the expenditure of bond proceeds with so little legal guidance.

Please let me know if you have any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0858/P1dn
RCT:wlj:jf

December 2, 2008

Andrew Miner:

As requested, this draft increases bonding authority for projects to remove contaminated sediments from the Great Lakes and their tributaries and eliminates the limitation on the use of the proceeds to projects for which EPA provides funding. The federal law includes a number of requirements for projects to receive EPA funding, effectively imposing those requirements on the use of the state bond proceeds. (I can provide you with a copy of the federal law if you are interested.) Without the link to the federal law, there are almost no requirements for the projects. I am unaware of another program that authorizes the expenditure of bond proceeds with so little legal guidance.

Please let me know if you have any questions or redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

Tradewell, Becky

From: Miner, Andrew - DOA [Andrew.Miner@Wisconsin.gov]
Sent: Wednesday, January 07, 2009 10:57 AM
To: Tradewell, Becky
Subject: FW: LRB Draft: 09-0858/P1 Contaminated sediment bonding and program
Attachments: Contaminated Sediment - GL Tribs & Harbors.xls

Becky,

For the contaminated sediments draft, see DNR's proposal below to require sites to be on the 303(d) impaired waters list. We'd list to insert this as a way to establish criteria for the projects. Please let me know if you have questions or concerns. Thanks,

Andrew

From: Neumann, Paul F - DNR
Sent: Tuesday, December 09, 2008 12:44 PM
To: Miner, Andrew - DOA
Cc: Hill, Gregory A - DNR
Subject: FW: LRB Draft: 09-0858/P1 Contaminated sediment bonding and program

Hi Andrew,

If the concern is that the proposed changes would make the scope of the program too broad, an alternative approach would be to replace the deleted G.L. Legacy language with new language that would require sites to be on the 303(d) impaired waters list. Therefore, in order to be eligible for funding, a site would have to meet all three of the following criteria:

- In Lake Michigan or Lake Superior or a tributary of either
- Is included in the 303(d) impaired waters list
- The source of the water impairment is contaminated sediment

Using those criteria as a filter, the eligible sites from the most recent 303(d) list are attached.

Thanks,
Paul

From: Miner, Andrew - DOA
Sent: Thursday, December 04, 2008 11:50 AM
To: Neumann, Paul F - DNR; Polasek Jr, Joseph P - DNR
Cc: Steinmetz, Jana D - DOA
Subject: FW: LRB Draft: 09-0858/P1 Contaminated sediment bonding and program

Joe and Paul,

Below are comments from bond council regarding concerns they have with the contaminated sediments bonding draft (attached). Any input you could provide would be appreciated. Thanks,
Andrew

From: Hoadley, Frank R - DOA
Sent: Wednesday, December 03, 2008 11:21 AM
To: Miner, Andrew - DOA; Steinmetz, Jana D - DOA
Subject: FW: LRB Draft: 09-0858/P1 Contaminated sediment bonding and program

01/07/2009

Andrew & Jana –

Following are comments from bond counsel on the draft you sent to me. Yes, they would like to see this tightened up.

Frank

From: Groethe, Reed [mailto:reed.groethe@foley.com]

Sent: Wednesday, December 3, 2008 8:53 AM

To: Hoadley, Frank R - DOA

Subject: RE: LRB Draft: 09-0858/P1 Contaminated sediment bonding and program

From the Desk of: Reed Groethe



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[www.foley.com](#)

Frank:

I agree that the draft legislation should provide more direction as to the expenditure of the borrowed money, both for the reason of good legislative policy and because of some bond-law concerns.

As to legislative policy, the existing law cross-references a specific federal grant program and thus effectively relies upon the federal grant program criteria. The amendments that would be made by the draft legislation remove the cross-reference but do not provide any criteria for the administration of the law. Specific criteria should be legislatively established, or rule-making power should be authorized, or both.

As to bond-law concerns, Supreme Court case law has approved borrowing to fund grants for local government wastewater treatment facilities under the Constitutional authorization for the incurrence of public debt to improve the waters of the State. The rationale of the case law should extend to the removal of contaminated sediments from waters of the State. Because the waters of the State include only portions of Lake Michigan and Lake Superior and only the tributaries that fall within the State's boundaries, it would be helpful for the legislation to clarify that the contaminated sediments should be removed from waters of the State.

Section 18.14 (2), Wis. Stats., provides that a determination that the State may not spend the proceeds of contracted public debt does not affect the validity of the public debt; however, such a determination might have adverse consequences for the State's federal tax law compliance. The possibility of any controversy concerning this matter could be minimized by providing more specific legislative direction.

Finally, for federal tax law purposes, we will want to know whether a particular borrowing would be applied to costs incurred directly by the State or made as a grant, and if a grant were to be made, we would want to know whether the grant would be made to a governmental entity or a nongovernmental entity. Similarly, if a grant were to be made, we might need to know when the grant money would be expended by the grant recipient.

By the way, to my knowledge, all other bond-financed grant programs have specific legislative authorization for the grant-making.

From: Hoadley, Frank R - DOA [mailto:frank.hoadley@wisconsin.gov]
Sent: Tuesday, December 02, 2008 10:59 AM
To: Groethe, Reed
Subject: FW: LRB Draft: 09-0858/P1 Contaminated sediment bonding and program

Reed –

Could you look at this issue, especially the drafter's note and comment to me?

Frank

From: Miner, Andrew - DOA
Sent: Tuesday, December 2, 2008 10:37 AM
To: Hoadley, Frank R - DOA
Cc: Steinmetz, Jana D - DOA
Subject: FW: LRB Draft: 09-0858/P1 Contaminated sediment bonding and program

Frank,

Please see the attached statutory language draft and drafter's note. DNR would like to expand the contaminated sediments bonding initiative contained in Act 20 to projects that do not necessarily receive federal Great Lakes Legacy funding. This draft accomplishes this, but, as the drafter notes, gives DNR rather broad authority to do what it wants with the bonding. We would appreciate your input as to whether this would be a problem or not, and if so, how it could be alleviated. Thanks,
Andrew

From: Frantzen, Jean [mailto:Jean.Frantzen@legis.wisconsin.gov]
Sent: Tuesday, December 02, 2008 8:14 AM
To: Miner, Andrew - DOA
Cc: Steinmetz, Jana D - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA
Subject: LRB Draft: 09-0858/P1 Contaminated sediment bonding and program

Following is the PDF version of draft 09-0858/P1.

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0858/P1

RCT:wlj:jjf

In 117

stays

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Not The bill eliminates the requirement that

Not if the project is in a water body that DNR has identified under the federal Clean Water Act as being impaired and the impairment is caused by contaminated sediments

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 20.866 (2) (ti) of the statutes is amended to read:

20.866 (2) (ti) *Natural resources; contaminated sediment removal.* From the capital improvement fund, a sum sufficient for the department of natural resources to fund removal of contaminated sediment under s. 281.87. The state may contract public debt in an amount not to exceed \$17,000,000 \$22,000,000 for this purpose.

SECTION 2. 281.87 of the statutes is amended to read:

281.87 Great Lakes contaminated sediment removal. The department may expend funds from the appropriation under s. 20.866 (2) (ti) to pay a portion of the costs of a project to remove contaminated sediment from Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior ^{plain text} ~~if federal funds are provided for the project under 33 USC 1268 (e) (12).~~ *the project is in an impaired*

(END)

water body that the
department has identified
under 33 USC 1313 (d)
(1) (A) and the source of
the impairment is contaminated
sediment



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0858/1

RCT:wlj:rs

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281.87 Great Lakes contaminated sediment removal. The department may expend funds from the appropriation under s. 20.866 (2) (ti) to pay a portion of the costs of a project to remove contaminated sediment from Lake Michigan or Lake Superior or a tributary of Lake Michigan or Lake Superior if federal funds are provided for the project under 33 USC 1268 (e) (12) the project is in an impaired water body that the department has identified under 33 USC 1313 (d) (1) (A) and the source of the impairment is contaminated sediment.

(END)